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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,831	12/28/2000	Ernest H. Roberts	RTS 2 0017	8674

23717 7590 07/03/2002

LAW OFFICES OF BRIAN S STEINBERGER  
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[REDACTED] EXAMINER

VARNER, STEVE M

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3635

DATE MAILED: 07/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.	ROBERTS, ERNEST H.
Examiner	Art Unit
Steve M Varner	3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 28 December 2000.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7,11,12 and 16-20 is/are rejected.
- 7) Claim(s) 8-10 and 13-15 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)                  4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                  5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                  6) Other: \_\_\_\_\_

### **DETAILED ACTION**

The Declaration under 37 CFR 1.131 is honored. Carman is removed as a reference.

In view of the papers filed 1/18/02, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by adding Philip G. Koehler as a co-inventor.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-6, 11, 12, are rejected under 35 U.S.C. 102(b) as being anticipated by Manak.

Regarding claim 1, Manak teaches a barrier implement (1) with a sheet (1) circumscribing a passageway along which arthropods crawl. (Fig. 1) The sheet has a

Art Unit: 3635

dimension sized relative to the passageway. There is an arthropod deterring component (2). (Fig. 1)

Regarding claim 4, 5, pliable or stiff are inherent properties of plastic.

Regarding claim 6, the arthropod deterring component (2) is molded directly therein. (Fig. 1)

Regarding claim 11, Manak shows the opposing ends of the sheet equal in length. (Fig. 2)

Regarding claim 12, Manak circumscribes a passageway defined by an exterior surface of a narrow or elongated structure. (Fig. 1)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 3, are rejected under 35 U.S.C. 103(a) as being unpatentable over Manak as applied in the rejection of claim 1 above.

Regarding claims 2, 3, Manak teaches the sheet (1) of plastic. (Col. 1, Line 15 to 20) It would have been an obvious design choice to make the sheet extruded or molded since these are usual ways to produce plastic articles.

Claim 7, 16-18, 20, are rejected under 35 U.S.C. 103(a) as being unpatentable over Manak as applied in the rejection of claim 1 above in view of Ritter.

Art Unit: 3635

Regarding claim 7, Manak shows the basic claimed structure. Manak does not show the arthropod-deterring component applied thereon. Ritter shows the arthropod deterring component (5) is applied thereon. (Fig. 4) It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use the arthropod-deterring component of Ritter in the structure of Manak. This would deter arthropods.

Regarding method claims 16-18, 20, the methods claimed are the obvious methods for using Manak's modified plastic tree band.

#### ***Claim Objections***

Claims 8-10, 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 8, 9, 10, are allowable for the device for impeding a route of travel of crawling arthropods configured to circumscribe a passageway defined by an utility wall plate and its abutting wall.

Claim 13 is allowable for a shield.

Claim 14 is allowable for a flange.

Claim 15 is allowable for a sheet configured in an O-shape.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

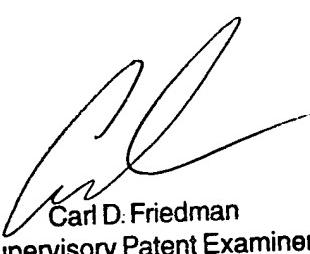
Art Unit: 3635

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-18940839. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV

June 28, 2002



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600